

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**  
11

12 ISAGANI DE LA PENA,

13 Petitioner,

14 v.

15 S. A. HOLENCIK,

16 Respondent.  
17

) No. CV 07-7150-R (AGR)

) **ORDER REQUIRING RESPONSE TO**  
) **PETITION (FEDERAL CUSTODY)**

18 Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. In  
19 order to facilitate the just, speedy, and inexpensive determination of this action, **IT IS ORDERED**  
20 that:

21 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a copy of  
22 this Order on respondent and the United States Attorney, or his authorized agent, in accordance  
23 with Rule 4(i) of the Federal Rules of Civil Procedure; and (b) serve a copy of this Order on  
24 petitioner.

25 2. Within 14 days, Respondent shall serve and file a Notice of Appearance  
26 notifying the Court of the name of the attorney who will have principal charge of the case,  
27 together with the address where the attorney may be served, and the attorney's telephone  
28 and fax number.

1           3.     If respondent contends that the Petition can be decided without the Court reaching  
2 the merits of petitioner's claims (e.g., because respondent contends that petitioner has failed to  
3 exhaust any administrative remedies as to any ground for relief alleged in the Petition, or that the  
4 Petition is barred by the statute of limitations), respondent shall file a motion to dismiss **no later**  
5 **than 30 days of the date of this Order**. The motion to dismiss shall not address the merits of  
6 petitioner's claims, but rather shall be confined to the basis for respondent's contention that  
7 dismissal without reaching the merits of petitioner's claims is warranted.<sup>1</sup> At the time the motion  
8 to dismiss is filed, respondent shall lodge with the Court all records bearing on respondent's  
9 contention in this regard.

10           4.     If respondent files a motion to dismiss, petitioner shall file his opposition, if any, to  
11 the motion within thirty (30) days of the date of service thereof.<sup>2</sup> At the time the opposition is filed,  
12 petitioner shall lodge with the Court any records not lodged by respondent which petitioner  
13 believes may be relevant to the Court's determination of the motion.

14           5.     Unless the Court orders otherwise, respondent shall not file a reply to petitioner's  
15 opposition to a motion to dismiss. If the motion is denied, the Court will afford respondent  
16 adequate time to respond to petitioner's claims on the merits.

17           6.     If respondent does not contend that the Petition can be decided without the Court  
18 reaching the merits of petitioner's claims, respondent shall file and serve an Answer to the Petition  
19 **no later than 45 days of the date of this Order**. At the time the Answer is filed, respondent  
20 shall lodge with the Court all records bearing on the merits of petitioner's claims. The Answer shall  
21 also specifically address the necessity for an evidentiary hearing to resolve any issue.

22           7.     Petitioner may file a single Reply responding to matters raised in the Answer within  
23 thirty (30) days of the date of service thereof. Any Reply filed by petitioner (a) shall state whether  
24

---

25           <sup>1</sup>     If respondent contends that petitioner has failed to exhaust any administrative remedies as  
26 to any ground for relief alleged in the Petition, the motion to dismiss shall also specify the  
27 remedies still available to petitioner.

28           <sup>2</sup>     As used herein, "date of service" refers to the date set forth in the Certificate of Service  
attached to the document served. It does not refer to the date the document is actually received.

1 petitioner admits or denies each allegation of fact contained in the Answer; (b) shall be limited to  
2 facts or arguments responsive to matters raised in the Answer; and (c) shall not raise new grounds  
3 for relief that were not asserted in the Petition. Grounds for relief withheld until the Reply will not  
4 be considered, unless the Court grants leave to amend the Petition. No Reply shall exceed ten  
5 (10) pages in length absent advance leave of Court for good cause shown.

6 8. A request by a party for an extension of time within which to file any of the pleadings  
7 required hereunder will be granted only upon a showing of good cause, and should be made in  
8 advance of the due date of the pleading. Any such request shall be accompanied by a declaration  
9 explaining why an extension of time is necessary and by a proposed form of order granting the  
10 requested extension.

11 9. Unless otherwise ordered by the Court, this case shall be deemed submitted on the  
12 day following the date petitioner's opposition to a motion to dismiss and/or Reply is due.

13 10. Every document delivered to the Court must include a certificate of service attesting  
14 that a copy of such document was served on opposing counsel (or on the opposing party, if such  
15 party is not represented by counsel). Any document delivered to the Court without a certificate  
16 of service may be returned to the submitting party and without consideration by the Court.

17 11. Respondent shall, in every pleading it files with the Court that includes exhibits, tab  
18 those exhibits in such a manner that they can be readily identified and accessed by the Court. In  
19 addition, respondent shall label each document lodged with the Court with the corresponding  
20 number of the document indicated in the Notice of Lodgement. For example, if the Abstract of  
21 Judgment is designated as the first document listed in the Notice of Lodgement, then the Abstract  
22 of Judgment shall be labeled "Lodged Document No. 1", etc.

23 12. Petitioner shall submit one (1) original and one (1) copy (or, if petitioner wishes to  
24 receive a conformed copy, one (1) original and two (2) copies) of all documents filed with the  
25 Court. The clerk will not make photocopies of documents except for good cause shown.  
26 Petitioner is reminded that he or she must sign the original document.

1           13.     Petitioner shall immediately notify the Court and counsel for respondents of any  
2 change of petitioner's address. If petitioner fails to keep the Court informed of where petitioner  
3 may be contacted, this action will be subject to dismissal. for failure to prosecute.  
4  
5  
6

7  
8 DATED: November 13, 2007  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Alicia G. Rosenberg*

---

ALICIA G. ROSENBERG  
UNITED STATES MAGISTRATE JUDGE